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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Implementation of Section 10 of the
Cable Consumer Protection and
Competition Act of 1992

Rate Regulation

)
)
)
) MM Docket No. 92-266
)
)

REPLY COMMENTS OF

DENVER AREA EDUCATIONAL TELECOMMUNICATIONS CONSORTIUM, INC.

ON NOTICE OF PROPOSED RULE MAKING

Denver Area Educational Telecommunications Consortium, Inc. ("DAETC") hereby submits the following comments regarding the leased access policies proposed in the above-captioned proceeding.

I. Background on DAETC and its Program Service, The 90's Channel Description of The 90's Channel

DAETC began programming leased access channels in late 1989.

DAETC's program service is known as The 90's Channel.¹ Although DAETC is non-profit, as are its cable programming efforts, The 90's Channel carries advertising. Since it is a "basic" program service, cable subscribers do not pay extra to receive the channel.

The 90's Channel carries a wide variety of material, much of it both controversial and otherwise unavailable to its viewers. It transmits documentaries and magazine programs on topics which have included: the Persian Gulf War, environmental contamination, racism, US-Cuba relations, union organizing, the status of recent immigrants, issues of concern to Native

¹ Because The 90's Channel is DAETC's chief cable programming effort, herein the terms "The 90's Channel" and "DAETC" will be used essentially interchangeably.

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Americans, the Palestinian uprising, the US invasion of Panama, the Iran-contra scandal, urban gangs, prison conditions, art censorship, gay rights, prostitution, and AIDS.²

Most programs carried on The 90's Channel express opinions in addition to reporting facts. Most of the opinion is liberal. If The 90's Channel were a publication, then, it would have more in common with *The New Republic* than the *New York Times*.

Much of the material shown on The 90's Channel is recorded with portable video cameras in a verite or semi-verite style. The channel has carried more than 20 hours of programming from a source known as CamNet, which is described in several articles attached hereto as Appendix A. As Appendix A shows, critics and observers have often commented on the immediacy, unvarnished quality, and the "realness" of such portable video work.

The 90's Channel delivers its programming to cable systems on videotape, which is played on automated equipment. Generally, there are two fresh hours of programming each week, which are repeated around the clock. The channel's present equipment makes it difficult to run different programs at different times of day, since manual tape changing would be required. The "round the clock" nature of the programming has provoked complaints, since material oriented toward adults runs during daytime hours.³

DAETC and the Difficult History of its Current Channel Lease

DAETC is a Colorado non-profit corporation formed in 1983. In 1986, DAETC entered into an agreement to lease full-time channels on eight cable systems operated by United Cable Television Corporation ("United").⁴ These

² Originally, the channel's programming consisted of *The 90's* magazine series. However, in 1991 the Public Broadcasting Service acquired all new episodes of *The 90's* on an exclusive basis, and the channel was forced to diversify its program sources.

³ This material deals with topics which are not readily comprehensible to children, occasionally including sexual topics, but is in no way "adult" in the sense of pornography.

⁴ Those systems are: Alameda, CA; Scottsdale, AZ; Denver (suburbs), CO; Hacienda Heights and San Fernando Valley, CA (both in Los Angeles County); Vernon, CT; Baltimore, MD; and Oakland County, MI. Pursuant to the channel lease agreement, DAETC's programming is to be carried on the lowest tier of service.

systems today serve over 500,000 households.

The lease agreement is unusual. DAETC is the licensee of an Instructional Television Fixed Service (ITFS) system in Denver, Colorado, where United operates a large cable system. United desired to lease excess air time on DAETC's ITFS system, and the parties concluded a largely barter arrangement whereby United leases air time from DAETC and DAETC leases cable channels from United.⁵ Under the agreement, DAETC presently receives cash payments from United in the amount of \$20,000 annually, and pays no cash for the cable channels. DAETC could not afford to pay a significant amount of cash under a channel lease agreement.

The term of the DAETC-United cable channel lease commenced in 1987. At that time, when DAETC attempted to transmit programming, United refused to honor the lease. DAETC subsequently sued United in state court in Colorado, where both entities were headquartered. After a substantial period of litigation, DAETC and United entered into a settlement agreement by which United agreed to provide the leased access channels. The state court judge hearing the case accepted the settlement agreement by court order, and retains supervision of the matter to insure adherence to the terms of settlement.

After DAETC began programming the leased access channels, United was merged into United Artists, forming a company known as United Artists Entertainment ("UAE"). UAE was majority owned by Tele-communications, Inc. ("TCI").

In September, 1990, the management of UAE's East San Fernando Valley system removed all 90's Channel programming from the air because it found the content to be objectionable. This removal was in direct violation of the quondam terms of Section 612 of the Communications Act, which specified that cable operators were to exercise no control over the content of leased access

⁵ The Commission now bars cable firms from leasing ITFS facilities in markets when they operate cable systems, since excess ITFS capacity is often leased by competitive "wireless cable" companies. See 47 CFR 74.931(h). However, the DAETC-United lease was executed prior to the adoption of this rule, and thus is grandfathered.

channels. DAETC was forced to hire attorneys and threaten the resumption of litigation before it was able to regain editorial control over its leased channel on the East San Fernando Valley system.

Subsequently, TCI acquired 100% ownership of UAE, and assumed direct control over the systems on which DAETC leases channels.

The manager of at least one TCI system has made it clear that she wants The 90's Channel removed from the air as soon as possible. Several others have expressed concern about the fact that they have received viewer complaints about controversial programs. These managers aver, and DAETC agrees, that viewers are often unaware that the cable company cannot control the content of programs on leased access channels.

In August, 1992, DAETC received a letter from a TCI executive which claimed, erroneously, that the United-DAETC channel lease agreement was to expire on October 31, 1992. As a result, DAETC has filed a motion in Colorado state court seeking a ruling that, *inter alia*, the term of the applicable channel lease agreement will not expire until November 1, 1995, at the earliest.⁶ Recently, TCI stated that it will not contest The 90's Channel's right to remain on the air through the end of November, 1993. However, the other contractual issues remain pending in Colorado state court.

DAETC's relationship with United and its successors has been difficult. As well, Congress has found that cable operators have evinced a general pattern of hostility toward channel leasing. For instance, the Senate Report to the Cable Consumer Protection and Competition Act of 1992 ("1992 Act") states:

...The cable operator is almost certain to have interests that clash with that of the programmer seeking to use leased access channels. If their interests were similar, the operator would have been more than willing to carry the programmer on regular cable channels.⁷

⁶ In addition, the United-DAETC channel lease provides for certain further renewal rights, at DAETC's option.

⁷ Senate Report 102-92 at p. 30. Footnotes omitted.

As Congress noted, leased access has been rare.⁸ DAETC feels isolated as a leased access programmer. We have few colleagues, and there is little other leased access usage on the United systems where our channel appears. The Commission should note that not many leased access programmers are participating in this proceeding, and, unlike most interests, they are not represented by a trade association. The reason is that there are very few leased access programmers.

Certain cable operators commenting in this proceeding maintain that there has been no history of leased access abuse. DAETC vigorously contests this view.

DAETC has learned through experience that it is difficult for The 90's Channel to be economically self-sustaining when it reaches only 500,000 households. Most cable networks---both non-profit and for-profit---reach many more. Although we are not in danger of going out of business, our small viewer base has limited the amount of programming we are able to provide. We believe that over the long term it will be necessary for us to lease more channels and reach a larger base of viewers if we are to achieve our potential.

Although United and DAETC were not adversaries when they concluded their lease agreement, their relationship certainly has become one in which the interests of the cable operator "clash with that of the programmer seeking to use leased access channels." As Congress intended, DAETC makes independent programming judgments which differ from those of the operator.⁹

The 90's Channel is cherished by many of its viewers because of its distinctive nature. DAETC believes firmly that The 90's Channel could not

⁸ See, for example, *Id.* at pp. 30-31.

⁹ See House Report 98934 (1984) at pp. 47-48. "Leased access is aimed at assuring that cable channels are available to enable program suppliers to furnish programming when the cable operator may elect not to provide that service as part of the program offerings he makes available to subscribers... [C]able operators do not necessarily have the incentive to provide a diversity of programming sources, especially when a particular program supplier's offering provides programming which represents a social or political viewpoint that a cable operator does not wish to disseminate..."

exist in its current form without Section 612 of the Cable Act, and its guarantee of editorial independence. And, as described above, we are entirely dependent upon low cost cable carriage.

II. Leased Access Rates for Non-profit Channel Lessees

In the Notice of Proposed Rule Making (NPRM), the Commission inquired as to whether it should mandate low non-profit rates for channel leasing.¹⁰

DAETC strongly endorses the comments of the Center for Media Education, et al (CME) and of the National Association of Telecommunications Officers and Advisors, et al (NATOA), both of which support preferential rates for non-profits. We feel that the rate of 0.1 cent per subscriber per month or 3% of gross revenue, as proposed by CME,¹¹ is affordable and appropriate. Based on our experience, we doubt that The 90's Channel or other non-profit channel lessees could afford to pay a rate that is significantly higher than the nominal one CME recommends.

DAETC notes that preferential non-profit rates have been criticized by many of the country's most powerful cable interests, including: the National Cable Television Association, Cox Cable Communications, Cablevision Industries Corporation, Continental Cablevision, Inc., various firms represented by Cole, Raywid & Braverman, Tele-communications, Inc., and Time Warner Entertainment Company, LP. This opposition is unsurprising, given that cable operators have long been antagonistic to leasing in general, and have expressed that aversion through excessive rates.

The FCC should recognize that Congress established leased access precisely because it is, in significant part, antagonistic to the interests of cable operators. Industry opposition is predictable, and no a bar to preferential rates that serve the public interest.

DAETC notes the comments of Consumer Federation of America (CFA), which hold that the Commission has the power to set preferential non-profit rates.

¹⁰ See NPRM, paragraph 153.

¹¹ See comments of CME, pp. 17-18.

However, CFA recommends that the Commission rely on the comments of the non-profit community as to the necessity for such rates, and establish a means test to insure that well-funded non-profits do not receive an unnecessary subsidy.¹²

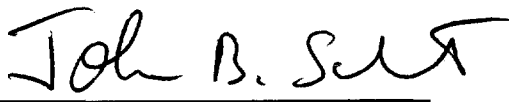
DAETC supports much of CFA's comments, and attests as to our own need for nominal non-profit rates, but is aware of no case in which non-profit programmers---even those with large budgets---pay for cable carriage. Public TV stations are carried for free. Cable operators pay non-profit networks such as C-SPAN and certain religious entities for their programming. DAETC's experience and observations lead us to doubt that non-profits of any size will be able to afford to lease channels unless they are granted highly preferential rates.

However, DAETC agrees that the Commission should monitor the growth of non-profit leased access programming, and determine over time if some non-profits grow to the point that their rates can be increased. If the Commission determines that rates for certain non-profits should be raised, DAETC recommends that the increases be gradual and established well in advance so that the programmer can make appropriate long-term financial plans.

Respectfully submitted,

DENVER AREA EDUCATIONAL
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By:


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Dated: February 5, 1993

¹² See comments of CFA, pp. 151-154.

Appendix A

ARTICLES CONCERNING CAMNET

MARKETPLACE

THURSDAY, JULY 30, 1992

Camcorders Spark Two Cable Ventures

Camnet Gains Following With Documentaries

By MARK ROBICHAUX

Staff Reporter of THE WALL STREET JOURNAL

LOS ANGELES—Cameraman Jay April sinks ankle-deep into a three-story-high compost heap, believed to be the largest in the Western world, and trains his camcorder on the heap's long-haired, bearded owner, who speaks only in rhyme.

Environmental zealot Tim Dundon, better known as Zeke the Sheik from the planet Bleak, is pontificating on the pile:

*I mix it like pancake batter
To make the ladder of matter fatter,
But it doesn't matter
Because everybody thinks I'm as mad
as a hatter.*

At intervals, Zeke breaks into song. A favorite: "I Never Promised You a Rose Garden."

The footage will soon air on Camnet, a five-month-old cable network that shows minidocumentaries shot with camcorders by a cadre of aging video activists and artists. Started by two women from Venice

MEDIA



The co-founders of the Camnet cable network, Nancy Cain (left) and Judith Binder, seek a seamless tapestry of footage when they edit their minidocumentaries, and they discourage their 17 or so correspondents from ever turning the camera off during shoots. 'Process is product,' says Ms. Cain. 'I have a high tolerance for raw tape.'

culture video artists who roamed from loft to loft in New York in the late 1960s and early 1970s, watching each other's experimental videos on such topics as the trial of the Chicago Seven and Woodstock. They dubbed themselves the Videofreex and once transmitted homemade programming to a valley in upstate New York that wasn't being served by a broadcast station.

Camnet personnel still haven't exactly joined the Establishment. Advertisers are few despite the cheap rates. Sponsors can

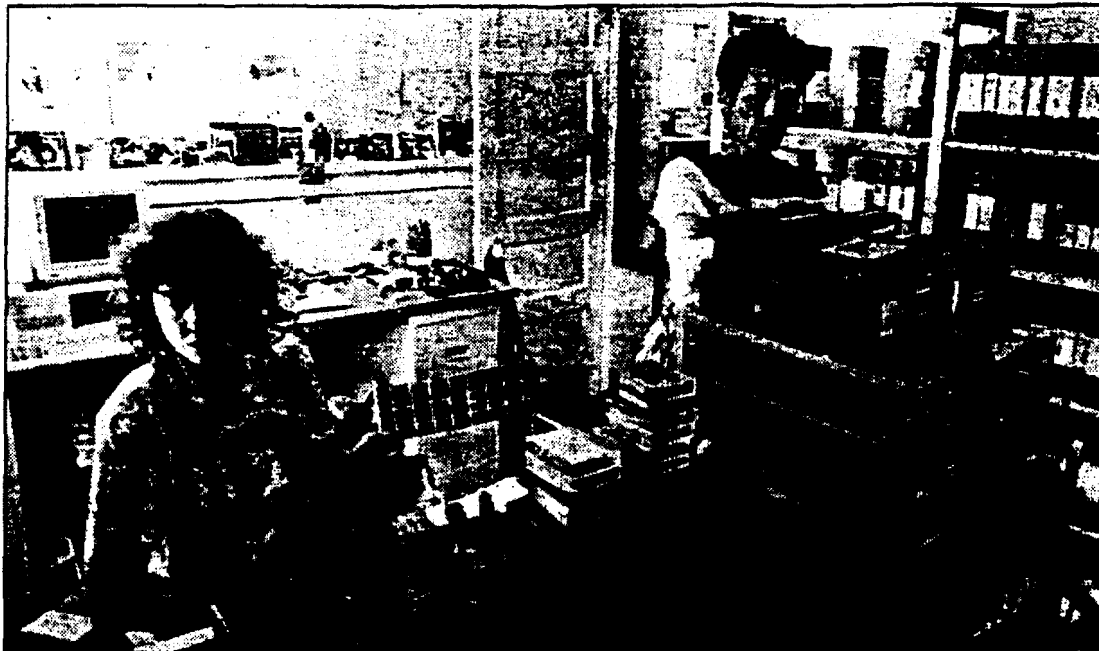
open on curvy mountain roads. On a sweltering California afternoon, he dutifully follows and records Zeke the Sheik as he points out areas of interest in his compost pile.

The footage isn't exactly broadcast quality. When the compost beneath his feet crumbles, Mr. April struggles for balance and the camera wobbles. He inadvertently coughs in the middle of a question, and an overhead jet muffles Zeke's voice. "It may not be technically perfect, but it's flat-out honest," he says. "This is gonzo with a human touch."

Los Angeles Times

FRIDAY, OCTOBER 16, 1992

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JOSE GALVEZ / Los Angeles Times

Nancy Cain, left, and Judith Binder at work in the video editing room of their Venice home.

A Cable Network About the Real World

■ **Television:** The fledgling CamNet presents footage shot on 8mm cameras by activists, amateurs and artists. In Southern California, it is seen by about 100,000 viewers.

By STEVE WEINSTEIN
SPECIAL TO THE TIMES

Inside the Democratic convention last July, a fledgling cable network, armed only with a home video camera, roamed the aisles alongside NBC, CNN and PBS. But while the establishment media aired the speeches and the spin of the assembled pols, the CamNet camera focused elsewhere. The constant milling and inattention of the delegates, the hot dogs and sauerkraut, a reporter complaining about the frequent evocation of God and the lack of anything healthy to eat.

"I'm actually for some sort of spirituality in school, but you can't have God, because what about the people who believe in the Goddess? What about the secular humanists?" said correspondent Beth Tanides from somewhere in Madi-

son Square Garden. "You really can get lost in this place. You get hungry, you get thirsty and the food here is really awful. And that very much symbolizes how hungry Americans are for some real food. How hungry I am for something nutritious to eat is how hungry America is for something good."

The two founders of CamNet, a 6-month-old cable network that presents mini-documentaries and features shot on 8mm home-video cameras by a contingent of activists, amateurs and artists, have essentially the same philosophy.

"TV is boring. You flip through and every channel is the same thing," said Nancy Cain, who operates CamNet out of her Venice Beach home with her partner, Judith Binder. "CamNet stops you. If you're flipping around and you see this, it doesn't look like public access and it doesn't look like television, and it looks like something is happening, and it looks like it might be live and it looks like you might be right in the middle of it. It's very often riveting and exciting. It's NBC-Not."

Only about 1 million people can see it, however. CamNet is available on cable systems in only eight

cities, including Denver, Baltimore, Detroit and Philadelphia. In Southern California, CamNet can be seen by about 100,000 viewers on United Artists Cable in the East San Fernando Valley and the La Puente-Baldwin Park area.

Home video, of course, is no stranger to television. The videotaped beating of Rodney G. King changed the very history of Los Angeles. "America's Funniest Home Videos" turned home bloopers into a Top 10 network smash, and "I Witness Video" shows grisly home video of accidents and disasters.

CAMNET: Capturing a Hungry Audience

Continued from F24

But Cain and Binder contend that CamNet is not "exploitative," not out for the video "Boing!" that punctuates those other shows.

"We're really the opposite of what you can see on television," said Binder. "We're trying to show events, issues or lifestyles that haven't had their say-so before. We'd like to be a real alternative."

The idea was born out of PBS' "The 90s," the populist camcorder magazine series on which Cain and Binder served as producers. When the program, now in its fourth and final season, died, they decided to test the concept on a broader scale.

Many of the stories CamNet has produced reflect the artsy, unorthodox background of the network's founders, although Cain said that their only guiding philosophy is "freedom of speech."

Binder, who was moved by the power of Frederick Weisman's *cinema verite* documentaries, has worked as a director and videographer in the performance art scene. Cain was a member of the Videofreex, a group that toured the country in the '60s and '70s producing experimental videos on Woodstock, the Chicago Seven and geodesic domes. CBS actually commissioned a pilot of their work, but, Cain said, one executive "told me that it was five years ahead of its time. He was wrong. It was 20."

The CamNet pieces—some sad, some funny, some haunting—include a visit to a condom store on Melrose Avenue to learn about teen-age sexual behavior, skinheads taunting Mexicans along the border, a trip to the Richard M. Nixon museum, a day in the life of New York City squatters and a demonstration in Washington in the aftermath of the King beating verdict.

About 20 correspondents around the country tape these stories on their own cameras and send the raw footage to Venice, where Cain and Binder sit side-by-side at a tiny editing bay in the back of Cain's house. The duo trim and craft the raw tape into *cinema verite* reports—very few CamNet pieces contain narration—producing four hours of programming each month that is shown in repeated cycles.

Reaction has been mostly positive, Binder said. "Those who hate it call it a communist plot, but most people seem to love it." The city of Alameda threatened to sue CamNet over its somewhat clinical look at a woman and the device she uses for sexual stimulation, Binder said, but that has been the only serious complaint.

Their office receives phone calls almost every day from viewers who want to help them expand into other areas. One teacher at San Fernando High School uses the CamNet reports in his civics classes. And Barbara Brownell, a North Hollywood mother of three who discovered her teen-agers watching CamNet one day, was so "turned on" by it that she went out and bought her own camera and started making tapes.

"It's very intimate and very real," said Brownell, who just shot a piece on a homeless man who warms his food on his car engine. "You can get people to say things that they would never say to a big camera with a crew and a big microphone boom. Just by turning on this little camera and pointing it at someone you can discover the

kind of charming and incredibly poignant human stories that would never happen with Ted Koppel."

Cain and Binder are financing the venture primarily out of their own pockets, paying their correspondents "essentially nothing." Advertisers are scarce, even though one week of hourly ads costs just \$504, or \$3 per spot. One of CamNet's most reliable sponsors, a Long Beach electronics store, burned down during the L.A. riots.

Nevertheless, Cain and Binder pledge to persevere. They brim with optimism that they will find their way onto thousands of expanding cable systems and make money for themselves and their dedicated contributors. They continue to seek underwriting from several companies that are compatible with their philosophy, and a Tokyo firm is interested in airing CamNet on late-night television in Japan, Cain said.

"I think that some rich Asian newspaper magnate is going to want to get into television or [the head of a huge cable conglomerate] is going to see something about us and say, 'I'm sorry I didn't return your calls, but now I believe in you,'" Cain said. "I'm convinced that there is a market for us just like there is a market for Ted Turner's cartoon channel. I mean, how many of these same old cartoons can you look at?"

JEFF ALLEN FOR TV GUIDE



VIDEO POWER TO THE PEOPLE

CamNet, America's first all-camcorder channel, shows life on the fringe

When it premiered last March, CamNet—America's first all-camcorder network—became a sort of non-establishment C-SPAN. While cable-supported C-SPAN covers power in Washington, CamNet's army of unpaid photographers serves up raw, and often fascinating, scenes from the fringe that the traditional news media frequently ignore. And that, in turn, gives clout to

CamNet contributor **Barbara Brownell** records a boy at a food pantry for the homeless.

people who don't hobnob with the elite.

CamNet has shown gang members' views of their neighborhood, rides on New York subways, racist skinheads at the Mexican border, and topless protesters outside the Democratic National Convention in New York City.

Each week, video vérité scenes like these are edited into a two-hour package that's continuously repeated on eight cable outlets reaching 819,000 homes.

"We think of it as real-life television," says Nancy Cain, who created CamNet with partner Judith Binder, and keeps it running from the back of her Venice, Cal., beach house. They hatched the idea when they saw how much camcorder material was available for PBS's *The 90's*, a series to which they contributed. With CamNet, they hope to, as Cain puts it, "demystify the media."

The cost is a mystery, though—Cain claims that CamNet has no working budget. They keep it going with their savings and a few small advertisers. But CamNet is designed to make a point, not a fortune. It's difficult to keep secrets when everyone has a camera, says Cain. As the Rodney King video showed, even government officials can't fight the power that ordinary citizens can wield with a tiny camcorder.

—Joe Rhodes

Media

[Cont. from 117] ably offer their own cable TV programs in a few years.

These new phone, screen and satellite technologies make Ross Perot's mad vision of an electronic town hall inevitable. Perot was on the mark when he said his notion makes reporters crazy by making the White House press conference obsolete.

Reporters are also being shoved aside by a relatively low-tech opponent: video-driven, reality-based TV. How can a police reporter describe a murder when viewers can see one on *Cops*? What some producers call "unfiltered" programming, *Cops* is one of a whole generation of reality broadcasts — *Rescue 911*, *Code 3*, *Top Cops*, *Unsolved Mysteries*, *America's Most Wanted*, *Sightings*, *I Witness Video* — which prove nothing is more gripping than a real story. None of the broadcasts use what used to be called reporters.

This fall Time Warner unveiled New York 1 News, New York City's first twenty-four-hour local news channel. Local cable news operations already exist in Washington, D.C., California and New England, but the debut of New York 1 in the nation's largest TV market has gotten the attention of the thousands of journalists who live there, providing a showcase of the world to come. New York 1 News, and other cable channels expected to follow, will broadcast live high-school football games and City Hall tax hearings and Board of Education condom fights and four-alarm fires — things we used to need reporters to learn about.

In the United States anyone with a pen or a pencil, a notebook, a still camera or a videocam — there are tens of millions — is a reporter. Some of them, like the amateur journalist who shot the police beating of Rodney King, will break the biggest stories in the country. They will provide the manpower, the audience and the voice for the next step in the evolution of information: the People's News.

The inevitable successor to the old and new kinds of transmitting stories, the People's News will make journalists out of all of us and plug us back into the political system in ways that would have had the radicals who founded the nation's media dancing in their cobbled streets.

The People's News is, in fact, already on the air, although most journalists have never heard of it. It is CamNet, a nine-month-old cable network that airs documentaries and features shot on Hi-8mm video cameras by amateurs, artists, activists. Like Ted Turner's belittled vision of CNN a decade ago, CamNet is the brilliant vision for the next decade and beyond. Founded in a back room of a Venice Beach, California, home by two former PBS producers, CamNet has no corporate backing or market research. Just twenty picture makers scat-

tered around the country.

CamNet is so far available in only eight cities, including Los Angeles, Denver, Baltimore and Philadelphia. But it or something like it is coming soon to a TV set near you. It's the inevitable next stop in the liberation of television from network owners and broadcasters and its evolution as a medium that can interact with millions of people and return TV to individual Americans, a process Clinton, Perot and Brown legitimized.

CamNet's pieces are eclectic, odd, funny, haunting, spontaneous and strikingly apart from slick commercial-TV production values. CamNet stories include condom stores in L.A., skinheads taunting Mexicans along the border, the Richard M. Nixon museum, a Washington, D.C., march against police brutality.

"You really can get lost in this place," a CamNet correspondent reported during the Democratic Convention in Madison Square Garden. "You get hungry, you get thirsty, and the food here is really awful. And that very much symbolizes how hungry Americans are for some real food." CamNet returns individual, idiosyncratic, untutored voices to broadcasting, where the whole culture of TV journalism — pollsters, blow-dried reporters and anchors, advocates, spokespeople and lobbyists — is structured to keep them off. The People's News will show us in the mirror, not just them.

There may be lots of good reasons why reporters need to survive and why the current structure of journalism ought to be preserved. But if they do exist, the media need to start articulating them.

So far the media, like the White House during 1992, show few signs of seeing themselves in crisis. The New News is largely still pooh-poohed as unnerving, slightly dangerous and frivolous mush. Newspapers still run black-and-white pictures of events the rest of us saw twenty-four hours earlier in color, and white, middle-aged men in suits still sit behind evening-news anchor desks and say nothing much in grave and mellifluous voices.

Time does finally seem to be getting short. Perot's bloody loss did not reaffirm the media's importance or service to the republic. Quite the opposite. Like Marley's Ghost, his campaign brought with it visions of the future nobody wants to see.

The blunt reality is this: In a world where everybody is a journalist, then nobody really is. Journalists derived their power and special place in the country from the fact that they got to see history and relay it to us. If we're all seeing history as it unfolds and taking the pictures ourselves, then journalists seem increasingly, and sadly, doomed to follow the lumbering, awkward and poorly adapted institutions they work for into the country's history. The 1992 campaign and the technological revolution that is charging along on its heels suggest the death of the reporter is just a few channels away. ■